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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Establishment of a Class A  
Television Service )

MM Docket No. 00-10  
MM Docket No. 99-292  
RM 9260

To: The Commission

**COMMENTS OF COSMOS BROADCASTING CORPORATION**

Cosmos Broadcasting Corporation ("Cosmos"), by its attorneys, submits herewith its comments in response to the Commission's Notice of Proposed Rule Making<sup>1</sup> to implement the Community Broadcasters Protection Act of 1999<sup>2</sup> and to prescribe regulations establishing a Class A television service for qualifying low power television ("LPTV") stations. Cosmos owns eleven full power stations throughout the country and is an applicant for a new station in Myrtle Beach, South Carolina. Given the extensive implications that the Commission's proposed rules will have on full power television stations, Cosmos has an important interest in the outcome of this proceeding.<sup>3</sup>

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<sup>1</sup> Establishment of a Class A Television Service, *Notice of Proposed Rule Making*, MM Docket Nos. 00-10, 99-292, FCC 00-16 (rel. Jan. 13, 2000) ("Notice").

<sup>2</sup> Community Broadcasters Protection Act of 1999, Section 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), Appendix I (*codified at* 47 U.S.C. § 336(f)) ("CBPA").

<sup>3</sup> Cosmos is a member of the Association for Maximum Service Television, Inc. ("MSTV") and, as a party to the comments MSTV is submitting in this proceeding, endorses the comments therein. The instant comments address additional issues important to Cosmos.

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**I. THE COMMISSION SHOULD BROADLY APPLY THE PRIORITY CONGRESS GRANTED DTV STATIONS.**

Congress was concerned that granting LPTV stations quasi-primary status could harm viewers' opportunity to receive digital service from full power broadcasters. Accordingly, Congress instructed the Commission affirmatively to make those modifications necessary to ensure the replication of full power broadcasters' service areas (or to permit maximization, to those qualifying) in the event "technical problems arise requiring an engineering solution to a full-power station's allotted parameters or channel assignment."<sup>4</sup> Congress took this extra step to give full power DTV stations priority over class A stations. If viewers of an analog station cannot receive the signal of the paired DTV station, then, if need be, class A stations must give way. Full power DTV stations can displace class A LPTV stations if replication is threatened.

**A. The Commission Should Permit Any Changes to DTV Stations Necessary to Ensure Replication.**

The Commission must understand from the outset that, necessarily, the technical problems to which Congress refers will be largely unforeseen. To provide certainty, the Commission should announce that it will apply this priority for full power stations to the extent necessary to ensure that viewers have the ability to receive the digital signals of any analog station they already can receive. This will remind prospective LPTV class A licensees that the implementation of digital television remains in progress and places them on notice that their facilities still may be subordinated in the interests of viewers.

Although most problems will be unpredictable, the Commission may find that all broadcasters would benefit if it provides examples of technical problems that may act to displace

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<sup>4</sup> 47 U.S.C. § 336(f)(1)(D).

class A stations. Cosmos is aware of one contemporary possibility. The Commission's decision to commit to the single DTV transmission standard of 8-VSB increases the significance of antenna orientation difficulties for viewers.<sup>5</sup> Until presently unforeseeable technical improvements are achieved, viewers in metropolitan areas will have to align their receiver antennae in a narrow range if they hope to obtain reliable DTV service. Viewers effectively may not receive stations that do not transmit from the same location as most other area stations. Thus, the DTV transmission standards that the Commission has mandated will make it imperative for many DTV stations to relocate to local antenna farms so that viewers can receive signals of all broadcasters. If relocating a full power station would have an impact on a class A station, the CBPA requires the Commission to permit the relocation and prohibit the class A station from causing interference.

Additionally, the Commission should take this opportunity to announce that any relocation to a "community tower" will be treated as resolution of a technical problem pursuant to section 336(f)(1)(D).

**B. The Commission Generally Should Protect Pending and Soon-To-Be Filed Petitions For Alternative DTV Allotments from Class A Stations.**

Congress authorized the Commission to change a full power station's authorized parameters or channel to resolve technical problems created by the implementation of the CBPA. Express grant of this authority in the CBPA shows that Congress intended that the Commission give applicants broader latitude for technical changes to cope with the effects of the CBPA than the Commission would have accorded them under its existing rules and policies. The

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<sup>5</sup> Letter from Magalie Roman Salas, Secretary, Federal Communications Commission, to Martin R. Leader, Counsel for Sinclair Broadcast Group, FCC 00-35 (Feb. 4, 2000).

Commission should make full use of this authority to ensure that full power broadcasters can complete their DTV implementation plans and should adopt a liberal waiver policy to give full power DTV stations the flexibility needed to modify their allotted parameters – especially in the early portions of the DTV transition period. This includes granting priority to pending or soon-to-be filed petitions for alternative DTV allotments. The Commission must complete its unfinished DTV business and not permit class A stations to impair DTV replication.

**C. Special Procedures May Be Needed to Protect Full Power Stations Operating in Channels 60-69.**

The CBPA makes plain that viewers of existing full-power stations are to be protected against interference from class A stations. Until the end of the DTV transition period, stations already operating in the 60-69 band can continue operating, but scheduled auctions for new services in the band may result in the need for alternative measures to protect full power stations. The Commission should be aware of these possibilities in its application of section 336(f)(1)(D). Special measures ultimately may need to be adopted to ensure viewers do not lose existing full power service.

**II. THE COMMISSION MUST GIVE PENDING APPLICANTS FOR NEW STATIONS PRIORITY OVER CLASS A STATIONS.**

The Commission has misinterpreted 47 U.S.C. § 336(f)(7)(A)(i) in proposing that pending applications for new stations would not be protected against Class A service.<sup>6</sup>

Throughout the Commission's implementation of DTV, it has acted to protect the proposed allotments for qualifying pending applicants for new stations.<sup>7</sup> Congress enacted the CBPA on

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<sup>6</sup> Notice at ¶27.

<sup>7</sup> Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, *Sixth Report and Order*, 12 FCC Rcd 14588, 14639 (1997).

the background of the Commission's long-standing determination to protect these applications,<sup>8</sup> and no part of the CBPA explicitly reverses this protection. Moreover, LPTV licensees cannot claim to be unaware of the plans of pending applicants. As of November 29, 1999, the contours of the proposed stations were a matter of public record and known to prospective class A licensees. Accordingly, the Commission must continue its policy of protecting pending applicants for new stations and prohibit class A stations from precluding grant of the applications.

The Commission latches on to the phrase "transmitting in analog format" to propose that pending applications would not be protected. Section 336(f)(7), however, is written in the negative<sup>9</sup> and sets the minimum requirements that must be met before the Commission may grant a class A license. Accordingly, the Commission should not construe this provision as the solitary source of authority for protecting full power stations against class A stations. In other words, the section does not represent the exhaustive set of conditions for protecting full power stations and pending applications for full power stations.<sup>10</sup> The Commission is permitted to adopt reasonable measures to protect full power stations. Allowing pending applicants to place their planned stations into operation is consistent with Congress' clear intent not to impair the ability of full power stations to serve their communities.

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<sup>8</sup> See *Fogerty v. Fantasy, Inc.*, 510 US 517, 114 S.Ct. 1023, 1030 (1994), citing *Lorillard v. Pons*, 434 US 575, 580 (1978) (Congress is presumed to be aware of an administrative or judicial interpretation of a statute). See also *Goodyear Atomic Corp v. Miller*, 486 US 174, 184 (1988) (Congress is presumed to know the existing law pertinent to the legislation it enacts).

<sup>9</sup> I.e., "The Commission may not grant a class A license . . . unless. . ." 47 U.S.C. § 336(f)(7).

<sup>10</sup> See, e.g., 47 U.S.C. § 336(f)(1)(D).

### **III. THE COMMISSION SHOULD PERMIT DTV-STYLE COORDINATION AND INTERFERENCE AGREEMENTS.**

In implementing digital television, the Commission adopted a new paradigm for broadcast regulation that more closely resembles the free market. Full power broadcasters may reach voluntary channel coordination and interference agreements with fellow primary broadcasters, and the Commission will honor those arguments.<sup>11</sup> If LPTV stations now will obtain quasi-primary status, there is no sound basis to preclude class A licensees from entering into those arrangements as well. Given the spectrum constraints of the transition, there is every reason to give broadcasters the flexibility to resolve potential disputes and develop more efficient accommodations. Accordingly, the Commission should permit full power and low power broadcasters to enter into agreements as specified in Section 73.623(f) to resolve interference and related concerns or to obtain improved allotment arrangements.

### **IV. INTERFERENCE PROTECTION**

The Commission should retain the existing *de minimis* interference standard specified in section 73.623(c)(2) to determine interference protection between full power and class A stations, but consider eliminating the ten percent cap.<sup>12</sup> The Commission initially should retain the existing 2 percent/station requirement but consider increasing that level to 5%. After the close of the DTV transition period and DTV facilities have been built-out successfully, or earlier if warranted, the Commission could reduce the *de minimis* level to 1 percent. Additionally, the Commission should only consider first- and adjacent-channel operations when determining

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<sup>11</sup> 47 C.F.R. §73.623(f).

<sup>12</sup> 47 C.F.R. §73.623(c)(2).

interference between full and low power stations. The so-called taboo protections should not be applied because an LPTV station's smaller service area generally would not be adversely affected.

**V. THE COMMISSION SHOULD ADOPT AND ENFORCE PROCEDURES TO ENSURE CERTIFYING CLASS A APPLICANTS HAVE COMPLIED WITH ELIGIBILITY REQUIREMENTS.**

The Commission must apply the same certification requirements to Class A applicants as it does to an applicant for any other service. The Commission has stated that “[a]bsolute candor is perhaps the foremost prerequisite for Commission licenseeship.”<sup>13</sup> When submitting a certification of eligibility and an application for a class A license, a licensee has the paramount duty of candor and truthfulness.<sup>14</sup> In the *Notice*, the Commission contemplates that an unqualified class A applicant “could be denied if a certification of eligibility were later determined to be incorrect.”<sup>15</sup> Cosmos agrees with the Commission that a class A application should be denied or revoked if the Commission discovers the licensee does not qualify and asks the Commission to announce how it intends to determine whether a class A certification of eligibility is, in fact, correct. Class A applicants should be required, at a minimum, to place in a

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<sup>13</sup> *Chameleon Radio Corp.*, 12 FCC Rcd 19348, 19361 (I.D. 1997), *aff'd*, 13 FCC Rcd 13549 (1998). *See Mobilemedia Corp., et. al.*, 12 FCC Rcd 14896, 14899 (1997) (stating that “the Commission's demand for absolute candor is itself all but absolute”).

<sup>14</sup> *See* 47 C.F.R. §§ 1.17, 73.3513; *see also Catocin Broadcasting Corp. of New York*, 2 FCC Rcd 2126, 2138 (Rev. Bd. 1987) (stating that “[t]he fundamental importance of truthfulness and complete candor on the part of applicants, as well as licensees in their dealings with the Commission is well established”); *In the Matter of Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1211 (1986) (stating that the Commission “view[s] misrepresentation and lack of candor in an applicant's dealings with the Commission as serious breaches of trust”).

<sup>15</sup> *Notice* at ¶ 12.

local public file proof of eligibility and retain all supporting documentation necessary. The Commission should consider having class A applicants submit the same materials to the Commission. Furthermore, the Commission should take whatever precautions necessary to make certain that the qualifying locally originated programming must contain a combination of audio and video. Cosmos requests that the Commission take reasonable steps to ensure that an applicant meets the statutorily-mandated requirements for a class A license.

## **VI. ALTERNATIVE ELIGIBILITY CRITERIA**

Congress provided that the Commission could adopt alternative criteria to determine eligibility for class A stations if the agency found it in the public interest. Cosmos reminds the Commission that the implementation of digital television also is in the public interest and urges it not to adopt any alternative criteria that would impair the ability of full power stations to replicate their existing or planned service areas. In its public interest analysis, the Commission must take into account that its actions in this proceeding could prolong the DTV transition period.

## **VII. CLASS A SERVICE OBLIGATIONS**

Pursuant to section 336(f)(2)(A)(ii), the Commission should adopt in this proceeding appropriate service obligations for class A stations requiring certain levels of minimum coverage to the designated community and eliminate the potential for LPTV stations to claim a community of license that it does not serve.



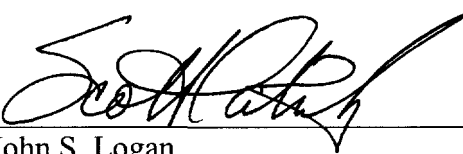
## **VIII. CLASS A FACILITIES CHANGES**

The Commission should not permit class A licenses to expand their existing service area until after the completion of the DTV transition. This will permit the Commission to preserve the ability of full power stations to replicate their existing service area without impairment.

For these reasons, Cosmos asks the Commission to consider its comments.

Respectfully submitted,

**COSMOS BROADCASTING CORPORATION**

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